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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,642	09/15/2003	Jack J. Kennamer	CIC/114/US	9397
2543	7590	05/12/2005	EXAMINER	
ALIX YALE & RISTAS LLP 750 MAIN STREET SUITE 1400 HARTFORD, CT 06103			LANEAU, RONALD	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/662,642

**Applicant(s)**

KENNAMER, JACK J.

**Examiner**

Ronald Laneau

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19,22-24,26-36 and 38-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19, 22-24, 26-36,38-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

1. The amendment filed on 01/21/05 has been entered. Claims 19, 22-24, 26-36, and 38-52 are pending.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 19, 22-24, 26-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al (US 5,969,606) in view of Heagle (US 5,939,974).

Reber et al teach a method of monitoring and tracking temperatures of a food item (col. 2, lines 21-22) including the steps of: reading with a hand-held data collector a label on the food item, the label having identifying the food item (col. 1, lines 45-46); measuring a first temperature value of the food item with a temperature measuring device in electrical communication with the hand-held data collector (col. 4, line 65 to col. 5, line 2); Reber et al further teach a memory 82 that stores information regarding the temperature and the record of the food item (see fig. 6, 82), a method wherein providing identity data further comprises: reading with a hand-held data collector a label (tag) on the food item, the label (tag) having the identity data (fig. 7, 96, 98), a method wherein detecting a nonconformance of the first temperature value of the food item with respect to specified temperature values for the food item (col. 6, lines 4-6); and providing an alert signal in response to detecting the nonconformance of

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the first temperature value (fig. 1, 36). It is noted that various temperatures (first and second temperatures) and time durations can be utilized (col. 5, lines 3-5).

Reber et al do not teach a hand-held instrument that can transmit information to a computer but Heagle et al teach information i.e. temperature measurement and other actions to a CPU (col. 7, lines 2-9), printing a label (tag) for the food item using a printer in electrical communications with the hand-held data collector, the label (tag) containing information relating to the temperature related data and transmitting the identity data to the computer (see Heagle, fig. 1, 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize transmission of information to a CPU, the label printing as taught by Heagle et al into the system of Reber et al because it would provide information to the main terminal as for managers to make decisions on the appropriate time to put or remove food items for sale.

4. Claims 36 and 38-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al (US 5,969,606) in view of Heagle (US 5,939,974) and further in view of Namisniak et al (US 5,711,160).

The same rejection to claims 19, 22-24, 26-35 applies above. Neither Reber et al nor Heagle et al teach automatically determining a shelf life for the food item and the an expiration date as a function of the shelf life but Namisniak et al teach creating a list of stored items along with their storage lifetime which determines a first expiration date for the food item as a function of the identity of shelf life at the location and the first date and also an expiration date for each of

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the food items as a function of the first and second shelf lives and the first and second dates (col. 4, line 66 to col. 5, lines 10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize transmission of information to a CPU, the label printing as taught by Heagle et al into the system of Reber et al because it would provide information to the main terminal as for managers to make decisions on the appropriate time to put or remove food items for sale. And it would have been obvious to one of ordinary skill in the art to utilize the lifetime and expiration date for food items as taught by Namisniak et al into the combined system of Reber et al and Heagle because it would automatically provide the lifetime in memory along with the item name and display both on the item slot.

### ***Response to Arguments***

5. Applicant's arguments filed 01/21/05 have been fully considered but they are not persuasive.

Applicant argues that the Reber reference does not disclose a "label (tag having the identity data." Contrary to Applicant's arguments, Reber does disclose a system utilizing a scannable label (tag) affixed to items to be identified (col. 1, lines 45-46). There is no question that Reber's system includes the identifying data that Applicant is claiming and arguing. Furthermore, Applicant argues that the examiner fails to make a prima facie case of obviousness since there is no suggestion or motivation to modify the references or combine reference teachings so as to arrive at the claimed invention. In response to applicant's arguments, the examiner recognizes that obviousness can only be established by combining or modifying the

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teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The combination between Reber and Heagle is proper due to the fact that since Heagle's digital thermometer is connected to a workstation, it's obvious that the information inputted or received therein will be transmitted to said workstation. As far as the Namisniak reference, the Examiner believes that Namisniak discloses the claimed 'creating a list of stored items along with their storage lifetime.' Applicant's arguments are deemed unpersuasive, claims 19, 22-24, 26-36, 38-52 are finally rejected.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on Mon-Fri from 8:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RL

Ronald Laneau  
Examiner  
Art Unit 3627

*Handwritten signature: Ronald Laneau 5/9/05  
Primary Examiner*

rl